Fact Sheet: Health care retainer practices

Health care retainer practices

HB 1818/SB 5716

Background

Retainer practices are a model of care where physicians charge a predetermined fee to patients for all primary care services provided in their offices, regardless of the number of visits.

These practices are usually structured as membership programs with patients paying a monthly or annual membership fee for services and amenities. Although every health care retainer practice is different, some of the common elements include:

– A set fee that is typically paid monthly or annually

– The fee covers all services provided directly by the physician or his/her employees – regardless of the number or type of visits (with this characteristic, the practice has assumed "risk")

– The practice typically limits the number of patients

– The practice typically provides enhanced access to the physician

– The practice does not bill insurance or Medicare

As important as understanding what retainer medicine practices are, it's equally important to understand what they are not. Retainer practices are not the kind of comprehensive package we normally think of as "insurance." They offer coverage for primary care services only and are offered by the doctor or medical clinic, not by an insurance company or health plan.

Limited risk = limited regulation

Under state law, providers engaged in the practice of retainer medicine are assuming "risk" by accepting prepayment for an unknown amount or type of services. Therefore, under current law, they are considered to be health care service contractors and are subject to regulation by the Office of the Insurance Commissioner.

However, the Office of the Insurance Commissioner recognizes that the amount of risk assumed and the overall potential of harm to consumers is limited. Generally, the risk to a consumer is limited to one month's retainer fee. As a result of the limited risk, the full scope of regulation is neither practical nor warranted.

The intent of this legislation is to create within the Insurance Code (Title 48 RCW) a regulatory structure that recognizes the reduced level of risk assumed by the primary care provider who is engaged in a health care retainer practice, while providing appropriate consumer protection and minimal insurance regulatory oversight by the Insurance Commissioner. Without this legislation or further action to address this regulatory gap, the Office of the Insurance Commissioner must enforce current law.

The details

Our legislation defines and creates a "safe harbor" for retainer health care practices. It allows existing practices to continue and similar practices to develop. Most importantly, it prevents illegal insurers from exploiting this niche by creating limited regulation.

This legislation will provide the following important consumer protections:

- **Financial:** Unlike the current law, our proposal requires no minimum level of capital funds. Retainer fees must be deposited into a trust account and distributed to the retainer practice at the end of the specified service period. If for whatever reason the retainer agreement is terminated (including insolvency) all unearned retainer fees must be returned to the subscriber.
- **Equity:** Retainer practices are prohibited from billing health plans for services provided under the retainer agreement (no double-dipping).
- **Fairness:** Retainer practices cannot "cherry pick" only the healthy. The bill prohibits retainer practices from declining to accept new retainer patients solely based on the patient's health status.
- **Transparency:** To ensure that consumers know what they are (and are not) buying, the Insurance Commissioner's Office will adopt rules establishing a standardized disclosure form to be distributed to all retainer subscribers. Retainer practices are prohibited from false and misleading advertising.
- **Size:** Retainer health care practices are limited to agreements between the provider and the patient. Marketing of these practices to groups is prohibited.

Updated: 02/16/07

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